

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

AMERICAN BAKERY PRODUCTS, INC.,

Plaintiff,

v.

CASE NO. 05-73746
HON. LAWRENCE P. ZATKOFF

PARAMOUNT BAKING CO.,

Defendant.

ORDER DISMISSING PLAINTIFF'S STATE LAW CLAIM

Plaintiff filed its Complaint on September 30, 2005. Plaintiff's Complaint contains the following five counts:

- Count I Appeal of U.S. Trademark Trial and Appeal Board Proceeding;
- Count II Declaratory Judgment regarding the validity of Plaintiff's trademark;
- Count III False Marking;
- Count IV False Advertising and Unfair Competition; and
- Count V Trademark Infringement

See Complaint.

The Court has subject matter jurisdiction over Counts I, II, III, part of Count IV, and Count V because they arise under federal law. *See* 28 U.S.C. § 1331. Part of Count IV, however, is based upon state law. Although the Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367(a), the Court may decline to exercise supplemental jurisdiction if there are "compelling reasons for declining jurisdiction." *See* 28 U.S.C. § 1367(c)(4). The Court declines to exercise supplemental jurisdiction over Plaintiff's state law claim in this matter. The Court finds

that the contemporaneous presentation of Plaintiff's parallel state claim for relief will result in the undue confusion of the jury. *See* 28 U.S.C. § 1367(c)(4); *see also Padilla v. City of Saginaw*, 867 F. Supp. 1309, 1315 (E.D. Mich. 1994).

Accordingly, IT IS ORDERED that the portion of Count IV that relies on Michigan law is hereby DISMISSED without prejudice. The Court retains jurisdiction over Counts I, II, III, the federal portion of Count IV, and Count V.

IT IS SO ORDERED.

Date: October 14, 2005

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE